

ORIGINAL

RECEIVED

JAN 19 2005

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

DOCKET FILE COPY ORIGINAL

Federal Communications Commission  
Office of Secretary

In the Matter of

)

)

Amendment of Section 73.202(b)

)

MM Docket No. 01-120

Table of Allotments

)

RM-10126

FM Broadcast Stations

)

(Lincoln and Sherman, IL)

)

To: The Commission

APPLICATION FOR REVIEW

LONG NINE, INC.

David D. Oxenford  
Brendan Holland

Its Attorneys

SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, D.C. 20037  
(202) 663-8000

Dated: January 19, 2005

No. of Copies rec'd  
List ABCDE

014

## SUMMARY

The Media Bureau's decision to allow Saga Communications of Illinois, LLC ("Saga") to relocate WMHX(FM) from Lincoln, Illinois, to the smaller community of Sherman, Illinois, was granted in error and must be reversed. The Bureau's decision in this matter was predicated on an incomplete and erroneous record. In addition, the Bureau failed to address a number of significant legal and factual issues raised by Long Nine, Inc. Perhaps more importantly, however, the Bureau's actions will not result in a preferential arrangement of allotments, but rather will deprive a community of one of its sole remaining commercial stations in order to move the station closer to a well-served urban area. Given that the community of Sherman is dwarfed by Springfield and is located within the Springfield Urbanized Area, Saga's proposal could not be granted without a *significant* showing of Sherman's independence, something it failed to provide in this case. Accordingly, Long Nine, Inc. requests that the Commission reverse the Media Bureau's decision in this matter and deny the proposed reallocation of WMHX(FM), as it is contrary to the public interest.

## TABLE OF CONTENTS

	<u>Page</u>
Summary .....	i
Introduction.....	3
Discussion .....	5
I. Despite Saga's Erroneous Claims to the Contrary, Sherman is Not Independent of the Springfield Urbanized Area and the Media Bureau's Conclusion on this Point is in Error .....	5
A. Should the Media Bureau's Decision Stand, Saga Would Undoubtedly Move the WMHX(FM) Transmitter Site to a Location That Would Blanket the Springfield Urbanized Area .....	5
B. The Population of the Springfield Urbanized Area Is Nearly 40 Times Larger Than That of Sherman .....	6
C. An Accurate Analysis of the <i>Tuck</i> Factors Demonstrates That Sherman Is Wholly Dependent Upon the Springfield Urbanized Area .....	7
1. The extent to which community residents work in the larger metropolitan area, rather than the specified community.....	7
2. Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests.....	8
3. Whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area.....	8
4. Whether the specified community has its own local government and elected officials and whether the smaller community has its own telephone book or zip code.....	9
5. Whether the community has its own commercial establishments, health facilities, and transportation systems .....	10
6. The extent to which the specified community and the central city are part of the same advertising market .....	11
7. The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries .....	11
II. The Media Bureau Erred in Affirming the Determination That Saga's Proposal Would Result in a Preferential Arrangement of Allotments.....	12
Conclusion .....	14

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 01-120
Table of Allotments	)	RM-10126
FM Broadcast Stations	)	
(Lincoln and Sherman, IL)	)	

To: The Commission

**APPLICATION FOR REVIEW**

Long Nine, Inc. ("Long Nine"), by its attorneys and pursuant to Section 1.115 of the Commission's Rules, hereby seeks Commission review of the action taken by the Media Bureau in the above-referenced proceeding. By its Memorandum Opinion and Order ("Order") released December 3, 2004, the Media Bureau denied Long Nine's Petition for Reconsideration in this matter and affirmed the relocation of station WMHK(FM), licensed to Saga Communications of Illinois, LLC ("Saga"), from the community of Lincoln, Illinois, to the smaller community of Sherman, Illinois, located in the Springfield, Illinois Urbanized Area.<sup>1</sup> For the reasons set forth below, the Media Bureau erred in its determination that the proposed relocation is in the public interest and the Commission should reverse the Bureau's decision in this matter and deny Saga's attempt to move WMHX(FM) to Sherman, Illinois.

---

<sup>1</sup> *In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Lincoln and Sherman, Illinois)*, Memorandum Opinion and Order, MB Docket No. 01-120, DA 04-3808 (MB Dec. 3, 2004). Notice of this Commission action was published in the Federal Register on December 20, 2004. See 69 FR 75860 (December 20, 2004). Accordingly, this application for review is timely filed consistent with Section 1.115 of the Commission's Rules. 47 C.F.R. § 1.115 (2004).

Prompted by Long Nine's earlier Petition for Reconsideration in this matter,<sup>2</sup> on September 3, 2004 the Bureau required Saga to provide supplemental information in the form of a showing pursuant to *Faye and Richard Tuck* ("Tuck analysis"). Saga's Response to the Media Bureau's request was filed on October 12, 2004. While the Commission did not specifically request a reply pleading from Long Nine, in light of the fact that the *Tuck* analysis was initiated on the basis of Long Nine's Petition, Long Nine submitted Supplemental Comments responding to the issues raised by Saga's Response to Request for Supplemental Information ("Response") on December 2, 2004.<sup>3</sup> In particular, Long Nine's Supplemental Comments sought to bring Saga's distortion of the record to the Media Bureau's attention and to address the woefully inadequate *Tuck* analysis Saga provided in its Response, which failed to show that Sherman is independent of the Springfield Urbanized Area.

In its rush to judgment in this proceeding, the Media Bureau failed to consider the facts and arguments raised by Long Nine, and failed to acknowledge that at its core, Saga's proposed relocation of WMHK exploits the FCC's allotment criteria and 307(b) policies for its own economic benefit, to the detriment of the public interest and the residents of the community of Lincoln. While the Order states that the Media Bureau's decision is based upon "consideration of the entire record in this proceeding,"<sup>4</sup> the record upon which its actions were predicated was notably deficient, containing only Saga's version of the facts. The Media Bureau simply took Saga at its word, and adopted its Order the day before Long Nine submitted its Supplemental

---

<sup>2</sup> On April 22, 2002, Long Nine filed a Petition for Reconsideration of the Commission's April 8, 2002 Report and Order in *Lincoln and Sherman, IL*, DA 02-687, 67 Fed. Reg. 16652. Among other things, Long Nine demonstrated that Saga should have been required to file a *Tuck* analysis regarding the interrelationship between Sherman and the Springfield Urbanized Area.

<sup>3</sup> *Supplemental Comments of Long Nine, Inc.*, MM Docket No. 01-120, submitted December 2, 2004.

<sup>4</sup> *Order* at ¶ 5.

Comments attempting to balance the record. Without the benefit of Long Nine's Supplemental Comments, the Media Bureau reached a flawed conclusion that Sherman, Illinois is sufficiently independent from the Springfield Urbanized Area, and its action in this matter must be reversed.

### **Introduction**

While the Media Bureau professes to be "concerned with the potential for stations to migrate from relatively underserved rural areas to well-served urban areas,"<sup>5</sup> that is precisely what it allows Saga to do here. In this case, the proposed reallocation of WMHX(FM) contravenes the objectives of Section 307(b) by shifting service from Lincoln, Illinois (population of approximately 15,000), to Sherman, Illinois (population of approximately 2,000), a substantially smaller community that is located within the Springfield Urbanized Area (population of approximately 111,500), which is already served by at least fourteen stations.<sup>6</sup> Given the relative populations of Lincoln, Sherman, and Springfield, any realistic assessment of Saga's proposal compels the conclusion that this is simply a proposal to serve the much larger Springfield Urbanized Area, and not to provide an independent voice to the small village of Sherman. The Media Bureau's conclusion to the contrary is inconsistent with the facts in this case.

Moreover, Saga's Response failed to demonstrate that Sherman is sufficiently independent of the Springfield Urbanized Area to warrant a first local service preference. Contrary to Saga's assertions, the first two criteria articulated in *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988) ("*Tuck*") – signal population coverage and the relative population sizes of the specified community and the Urbanized Area – compel the attribution of the aural services in the Springfield Urbanized Area to Sherman in the 307(b) analysis. Furthermore, with regard to

---

<sup>5</sup> Order at ¶ 5.

<sup>6</sup> See Long Nine's Comments at 2.

the third criterion concerning the independence-interdependence of the community, a review of all the facts in this case compels the conclusion that Sherman is wholly dependent on Springfield for nearly all of its basic needs, contrary to the facts presented by Saga and relied on by the Media Bureau in its thinly supported Order.

Finally, neither Saga's Response nor the Media Bureau's Order refute the primary arguments made by Long Nine in its Petition for Reconsideration. Tellingly, Saga did not dispute, and the Bureau did not consider, Long Nine's contention that it makes absolutely no economic sense for Saga to move WHMX(FM) to a community more than seven times smaller than its current community of license for any other reason than to serve the much larger Springfield Urbanized Area. Saga did not contest, and the Bureau did not address, the fact that the proposed transmitter site in Sherman will put a city-grade signal to nearly the entire the Springfield Urbanized Area. Moreover, the Media Bureau does not question the fact that Saga's Response, like its earlier filings in the proceeding, does not even deny that Saga's true intent is to serve Springfield. As Long Nine noted in its Supplemental Comments, this is not surprising as WMHX(FM) can already serve the residents of Sherman from its current site, a fact the Media Bureau ignores. In short, the Media Bureau should have rejected Saga's proposal as an attempt to manipulate the Commission's allotment criteria based on its desire to serve the larger Springfield Urbanized Area. Instead, the Media Bureau's Order fails to consider or address these arguments and turns a blind eye to the result of the proposed reallocation. If the Media Bureau's action in this case is allowed to stand, it will set a dangerous precedent allowing for the relocation of stations from truly independent communities in need of local service to well-served communities located in larger, adjacent urbanized areas. Such a result is inconsistent with Commission precedent and policy, as well as the allotment priorities of Section 307(b).

## Discussion

### **I. Despite Saga's Erroneous Claims to the Contrary, Sherman is Not Independent of the Springfield Urbanized Area and the Media Bureau's Conclusion on this Point is in Error**

In its Response, Saga makes the unsupportable claim that "[T]he *Tuck* criteria reveal that Sherman clearly passes the Commission's test for independence." Response at 3. This claim could not be further from the truth and is contradicted by Saga's own cursory and insufficient *Tuck* showing. According to the Commission, the factors to be considered in its analysis of whether Sherman is sufficiently independent of the Springfield Urbanized Area can be articulated as follows: (1) the extent to which WMHX(FM) would provide service to the Springfield Urbanized Area; (2) the relative population sizes of Sherman and Springfield; and, most importantly (3) the independence of Sherman from the Springfield Urbanized Area.<sup>7</sup> Consideration of these factors compels the conclusion that Sherman is a bedroom community entirely dependent on Springfield, and therefore, is less deserving of a full time service than is Lincoln.

#### **A. Should the Media Bureau's Decision Stand, Saga Would Undoubtedly Move the WMHX(FM) Transmitter Site to a Location That Would Blanket the Springfield Urbanized Area**

As Long Nine demonstrated in its earlier filings in this proceeding, if Saga is permitted to change its city of license to from Lincoln to Sherman, it would be able to change transmitter sites so as to put a city grade signal over the vast majority of the Springfield Urbanized Area.<sup>8</sup> Indeed, Saga admits that its "optimum site" would provide 70 dBu service to 86% of the

---

<sup>7</sup> *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir 1951) ("*Huntington*"); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990) ("*RKO*"); *Tuck*.

<sup>8</sup> In its Comments, Long Nine demonstrated that Saga would be able to place a city grade signal over 99% of the Springfield Urbanized Area. However, given the extension of the southwestern boundary of the Urbanized Area by the 2000 Census, that percentage has dropped slightly.



Urbanized Area.<sup>9</sup> At another “optimum” fully spaced site which Saga fails to mention, it would be possible for WMHX(FM) to provide 70 dBu coverage to 95.1% of the Springfield Urbanized Area.<sup>10</sup> At either site, Saga would principally serve Springfield, and not Sherman, regardless of what measure of service is used. Further, Saga does not deny that its justifications for relocating to Sherman are pretextual. Saga does not deny that there is no need to change WMHX(FM)’s city of license to Sherman, as Sherman’s residents are already served from the station’s current site.

The Media Bureau ignored the fact that the only rational explanation for Saga’s desire to move WMHX(FM) to Sherman is that such relocation would enable the station to provide a city-grade signal over Springfield. Common sense and economic reality dictate that Saga would eventually choose a transmitter site as close to Springfield as possible, thereby increasing the value of the station. While the move might serve the economic interests of Saga, it would add yet another station to the Springfield Urbanized Area and would leave the residents of Lincoln with nothing but a daytime-only AM station and a noncommercial FM station. However, the Media Bureau fails to consider this resulting harm to the public interest and established Commission precedent, blithely stating that “as a Class B1 facility, Station WMHX... will invariably serve a large portion of the Springfield Urbanized Area.”<sup>11</sup>

**B. The Population of the Springfield Urbanized Area Is Nearly 40 Times Larger Than That of Sherman**

The Media Bureau also erred under the third criterion of the *Tuck* analysis. Specifically, the Commission has found that more evidence is required to demonstrate that communities are independent when the suburban community at issue is significantly smaller than the central city,

---

<sup>9</sup> See Technical Comments to Response.

<sup>10</sup> See Exhibit 1, Engineering Statement, prepared by Roy Stype, at Fig. 1.0.

<sup>11</sup> Order at ¶ 6.

as is the case here.<sup>12</sup> Yet Saga itself admits in its Response, the Springfield Urbanized Area has a population nearly 40 times larger than that of Sherman. Response at 3. Specifically, the 2000 Census lists Sherman's population as a mere 2,871, while Springfield's is a much greater 111,454. This factor is of paramount importance. In addition, as the Commission has pointed out, Sherman is part of the Springfield Urbanized Area. Because Sherman is dwarfed by Springfield and is located within the Springfield Urbanized Area, a *significant* showing of independence is required by Saga to satisfy the *Tuck* analysis – another fact that was disregarded by the Media Bureau.<sup>13</sup> Consequently, Commission precedent places the burden on Saga to do what cannot be done, namely, to make a compelling showing that other evidence demonstrates the independence of Sherman. As shown below, Saga has failed to meet its considerable burden in this case and the Media Bureau's decision to nonetheless grant the proposed reallocation is in error.

**C. An Accurate Analysis of the *Tuck* Factors Demonstrates That Sherman Is Wholly Dependent Upon the Springfield Urbanized Area**

**I. The extent to which community residents work in the larger metropolitan area, rather than the specified community**

As an initial matter, Saga's Response failed to satisfy the Commission's general expectation that independent communities maintain substantially independent work forces. Indeed, Saga provided *absolutely no* factual evidence to show that Sherman residents work in Sherman. Instead, Saga merely provided a convoluted and unpersuasive estimate based on travel

---

<sup>12</sup> See *Tuck*, 5 FCC Rcd at 5378 ¶ 34.

<sup>13</sup> See *RKO*, 5 FCC Rcd at ¶ 13. See also *Tuck; Eatonton and Sandy Springs, Georgia*, 6 FCC Rcd 6580 at ¶¶ 24, 25 (1991) (denying a first local service preference based in part on much smaller size of community relative to the larger central city of an urbanized area).

times to work, which the Commission has deemed insufficient.<sup>14</sup> Significantly, even Saga's own weak showing concludes that the majority – at least 60% – of the residents of Sherman commute to Springfield for work. Therefore, the uncontroverted evidence in this proceeding demonstrates that a substantial majority of Sherman residents are employed in Springfield, and not in Sherman. The fact that most of Sherman's residents commute to Springfield to work supports a finding of interdependence, contrary to the Media Bureau's conclusion.

2. Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests

The Media Bureau properly concludes, perhaps because Saga itself admit as much, that Sherman does not have its own weekly newspaper, or any other local media. Order at ¶8; Response at 4. Therefore, there is no outlet for local news for Sherman residents and no advertising available for the few Sherman small businesses that actually exist. In addition, Sherman does not have its own website, which is convincing evidence that Sherman should not be considered an independent community; the typical independent community today maintains a website for its residents and for promotional purposes. Indeed, Sherman's promotional activities for its own economic development are handled by the Springfield Economic Development Council. Sherman's lack of coverage of its own local affairs supports a finding of Sherman's interdependence with Springfield.

3. Whether the community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area

In an effort to satisfy this factor, Saga provides a single "statement" from the President (Mayor) of Sherman purportedly showing that he perceives Sherman to be separate from the

---

<sup>14</sup> See *Pleasanton, Bandera, Hondo, and Schertz, Texas*, 15 FCC Rcd 3068, 3071 ¶ 9 (2000) (providing a list of businesses is insufficient to establish that a majority of residents live and work in the community under a *Tuck* analysis) (*dismissed on other grounds*, 12 FCC Rcd 8392 (1997)).

Springfield Urbanized Area. With all due respect to Sherman's Mayor, the statement is unpersuasive. Further, the Mayor is only one local leader, who is a paid advocate of his community's independence. Moreover, the statement submitted by Saga is not a declaration in that it has not been signed "under penalty of perjury" as required by Section 1.16, 47 C.F.R. § 1.16, of the Commission's Rules. Therefore it has no probative value and should not be credited; however, the Media Bureau relies on the unsupported statement as definitive proof that Sherman is independent from Springfield. The Media Bureau's reliance on such questionable evidence warrants a reversal of its decision.

4. Whether the specified community has its own local government and elected officials and whether the smaller community has its own telephone book or zip code

With regard to the fourth factor, Sherman has its own Mayor, a small group of Trustees, a zip code, and telephone book. Yet this hardly supports a determination that Sherman is independent. These facts should be afforded little weight, as the same is true of most small communities, including those that are interdependent with an Urbanized Area. Using the Media Bureau's logic, almost every bedroom community would be considered independent of a contiguous Urbanized Area, as the large majority of these communities have a handful of elected officials, a post office, and a zip code. Commission precedent, including both *Huntington* and *RKO*, make it clear that a more persuasive showing that distinguishes the instant community, Sherman, from Springfield, is required.<sup>15</sup> This is particularly true as factors four and five, for good reason, have traditionally been afforded little weight in determining whether a smaller community is dependent on a larger Urbanized Area.<sup>16</sup> The Media Bureau erred in affording the fourth factor significant weight in determining Sherman's dependence on Springfield.

---

<sup>15</sup> *Huntington*, 192 F.2d at 33; *RKO*, 5 FCC Rcd at 3222.

<sup>16</sup> *See Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 at ¶ 9(c) (2001).

5. Whether the community has its own commercial establishments, health facilities, and transportation systems

The Order makes a favorable finding under the sixth factor regarding commercial establishments, based on the short list of small businesses that are located in Sherman provided by Saga's Response. Order at ¶ 10; Response at 6-7. The Media Bureau neglects to note that that Sherman does not have its own Chamber of Commerce, and is instead served by the Greater Springfield Chamber of Commerce. In addition, as the brief list provided by Saga illustrates, Sherman is devoid of any medium or large sized businesses capable of employing residents of Sherman. Indeed, Sherman lacks the majority of businesses one would normally associate with an independent community; there is no clothing store, movie theater, dry cleaner, department store, drugstore, toy store, or taxi service.<sup>17</sup> Sherman has no hospital of any kind, and relies instead on hospitals located in Springfield for medical care. Perhaps most tellingly, Sherman does not have a single grocery store, so its residents must travel to Springfield to obtain groceries. Thus, it stretches credulity for Saga to argue that Sherman is an independent community, when residents of Sherman are dependent upon Springfield to meet the majority of their most basic needs. Accordingly, this important factor also strongly demonstrates Sherman's interdependence. It is no surprise that the Media Bureau reached an erroneous conclusion, given that it simply took Saga's Response at face without the benefit of an independent analysis or consideration of the facts raised by Long Nine's Supplemental Comments.

---

<sup>17</sup> The Commission has noted that the presence of such commercial services weighs toward independence. See *Bon Air, Chester, Mechanicsville, Ruckersville, Williamsburg and Fort Lee, Virginia*, 11 FCC Rcd 5758 (1996) at ¶ 11. On the other hand, the absence of such services – as in this case – weighs against independence.

6. The extent to which the specified community and the central city are part of the same advertising market

The Order does, however, properly conclude that Sherman is part of the Springfield Arbitron Metro and Springfield Nielsen Metro for advertising purposes. As such, Sherman is served by the many radio and television stations within the Springfield Urbanized Area, including those currently owned by Saga. This factor further demonstrates dependence on Springfield.

7. The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries

As its sole basis for asserting that Sherman does not rely on Springfield for municipal services, Saga states that according to Sherman's Mayor, "Sherman does not rely on Springfield" for such services. This comment is striking as it is misleading; Sherman has no junior high or high schools so its children are required to attend such schools in Springfield and elsewhere. Likewise, Sherman does not have its own sewer and water services which are handled by the Springfield Metropolitan Water Service. While Sherman has local police and fire departments, these departments are significantly aided by their Springfield counterparts. The Media Bureau largely ignores these facts, and relies solely on the fact that Sherman has its own police and volunteer fire department. Order at ¶ 11.

In light of the D.C. Circuit's holding in *Huntington* and the Commission's holding in *RKO*, the Bureau should not have afforded much weight to this factor in any event. In *Huntington*, the court found that the 30,000 person community of Huntington Park had a great number of municipal organizations – unlike Sherman in the instant case – yet nevertheless refused to grant the community a first local service preference.<sup>18</sup> Similarly, in *RKO* the

---

<sup>18</sup> 192 F.2d at 34.

Commission denied a reallocation request, despite finding that the community had “scores of civic organizations.”<sup>19</sup> Because Sherman’s extremely limited municipal services are nowhere near as extensive as those found in other cases, including *Huntington* and *RKO*, these services were insufficient to establish that Sherman is independent of the Springfield Urbanized area of which it is a part as a matter of law.

In summary, then, only three of the eight *Tuck* factors could conceivably demonstrate that Sherman is independent from the Springfield Urbanized Area and those are factors which should have been given little, if any, weight. This is especially true where, as here, the other factors, and all other evidence, overwhelmingly establish that Sherman is interdependent with the Springfield Urbanized Area. It is only by ignoring the complete facts and failing to undertake its own analysis that the Media Bureau was able to conclude that Sherman is independent from Springfield. Accordingly, its action in this matter must be reversed.

## **II. The Media Bureau Erred in Affirming the Determination That Saga’s Proposal Would Result in a Preferential Arrangement of Allotments**

Contrary to the Order’s conclusion, Saga’s proposal should not have been awarded a first local service preference. In addition, retaining station WMHX(FM) in Lincoln would be preferable to reallocating the station to Sherman; in short, Lincoln is more deserving of a full time FM service than is Sherman. In reaching its hasty determination that the proposed reallocation of WMHX(FM) is in the public interest, however, the Media Bureau failed to even discuss the level of service, or more aptly the lack of service, that will remain for the citizens of Lincoln. The Media Bureau’s conclusion is in error, not simply because it is predicated on inaccurate facts, but because it lacks any balancing of the harm caused to Lincoln – a community lacking in local service – and the gain to Sherman – a bedroom community of Springfield, served

---

<sup>19</sup> 4 FCC Rcd at 4999 ¶ 11.

by over a dozen stations. The Media Bureau's action will result in Lincoln losing its only full-time service, and the Springfield Urbanized Area gaining yet another service – even though it is already well-served by at least 14 stations. Thus, the costs of the proposal clearly outweigh its benefits, an issue ignored by the Media Bureau's decision. Further, as the Commission stated in *Fairfield and Norwood Ohio*, 7 FCC Rcd 2377 (MMB 1992), the public has a legitimate expectation that existing service will continue, and this expectation is a factor that must be weighed independently against the service benefits that may result from reallocating a channel from one community to another.

As noted previously, Lincoln has a population of approximately 15,000 persons that are served by only one other commercial station, a daytime-only AM station. The only other service remaining in Lincoln is a noncommercial educational FM station WLNX. In contrast, the Springfield Urbanized Area is served by numerous commercial stations, all of which should be attributed to Sherman, including WMHX(FM), which already can be heard in Sherman.<sup>20</sup> Consequently, WMHX(FM) at its new site would provide no cognizable reception service benefits as it is the type of “urban move-in” that the Commission has consistently discouraged. As the Commission clearly stated in its seminal holding in *Modification of FM and TV Authorizations*, 5 FCC Rcd 7094 (1990):

We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's Section 307(b) related policies. 5 FCC Rcd at 7096.

Saga wisely avoided any attempt to distinguish this statement in light of its own “technical manipulation” of the Commission's Rules in this case. However, the Commission should

---

<sup>20</sup> See, e.g., *Greenfield and Del Ray Oaks, California*, 11 FCC Rcd 12681 ¶ 10 (Allocation Branch 1996) (holding that a proposal for first primary service to a community is not preferential where residences of that community are already adequately served).



continue to follow this sound policy, and should recognize and deny Saga's efforts to circumvent the Commission's policies designed to prevent exactly the kind of relocation proposed in this proceeding.<sup>21</sup>

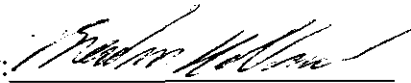
Thus, the Media Bureau's conclusion to affirm the Allocations Branch that the reallocation of Channel 236C1 to Sherman would result in a preferential arrangement of allotments is inconsistent with existing Commission precedent and must be overturned.

### **CONCLUSION**

In its rush to judgment in this proceeding, the Media Bureau failed to consider the facts and arguments raised by Long Nine, and failed to acknowledge that at its core, Saga's proposed relocation of WMHK exploits the FCC's allotment criteria and 307(b) policies for its own economic benefit, to the detriment of the residents of Lincoln. The proposed relocation of WMHK is contrary to the public interest, and Long Nine respectfully requests that the Commission reverse the decision of the Media Bureau in this matter and deny the proposed reallocation of Channel 230B1 from Lincoln, Illinois to Sherman, Illinois.

Respectfully submitted,

**LONG NINE, INC.**

By: 

David D. Oxenford  
Brendan Holland

Its Attorneys

SHAW PITTMAN LLP  
2300 N Street, N.W.  
Washington, D.C. 20037  
(202) 663-8000

Dated: January 19, 2005

---

<sup>21</sup> See *Modification of FM and TV Authorizations*, 5 FCC Rcd 7094 at ¶ 11; *RKO*; *Tuck*; *Huntington*.

## CERTIFICATE OF SERVICE

I, Rhea Lytle, a secretary with the law firm of Shaw Pittman LLP, do hereby certify that a copy of the foregoing "**APPLICATION FOR REVIEW**" was mailed, first class, postage prepaid this 19th day of January, 2005 to the following:

Chairman Michael K. Powell\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B201  
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B115  
Washington, D.C. 20554

Commissioner Michael J. Copps\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A302  
Washington, D.C. 20554

Commissioner Kevin J. Martin\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A204  
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein\*  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
Washington, D.C. 20554

John A. Karousos\*  
Assistant Chief, Audio Division  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A266  
Washington, D.C. 20554

Robert Hayne, Esq.\*  
Audio Division, Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 3-A262  
Washington, D.C. 20554

Gary S. Smithwick, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, N.W., Suite 301  
Washington, D.C. 20016

Bob Metz  
P&M Communications  
527 Woodlawn Road  
Lincoln, IL 62656

  
Rhea Lytle

\*Via Hand Delivery